

The 24th September, 1985

No. 9/5/84-6 Lab./8028.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947, (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the management of State Transport Controller, Haryana, Chandigarh and General Manager, Haryana Roadways, Ambala.

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER, LABOUR COURT,
AMBALA

Reference No. 25 of 1984

SHRI RAKESH KUMAR AND THE MANAGEMENT OF STATE TRANSPORT CONTROLLER, HARYANA, CHANDIGARH AND GENERAL MANAGER, HARYANA ROADWAYS, AMBALA.

Present :

Shri U. Kant for the applicant.

Shri P. K. Sachdeva, Law Officer, for the Respondent.

AWARD

The Hon'ble Governor of Haryana in exercise of the powers conferred,—vide clause (d) of subsection (i) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute between Shri Rakesh Kumar, workman and the Management of State Transport Controller, Haryana, Chandigarh, and General Manager, Haryana Roadways, Ambala City. The terms of the reference are as under :—

“Whether the termination of services of Shri Rakesh Kumar, workman was justified and in order? If not to what relief is he entitled to?”

To trace out the history of the controversy in hand between Shri Rakesh Kumar, workman and State of Haryana briefly narrated the facts alleged by the parties are as under :—

Workman Shri Rakesh Kumar alleged in his Statement of Claim that he was appointed as a Helper (Motor Mechanic)

by the respondent on 3rd December, 1979,—vide order No. 7290/ECS, petitioner remained in the service of respondent one year and six months regularly thereafter, the services of the petitioner were dispensed with in an arbitrary manner without assigning reason, notice or holding any enquiry. Accordingly; order dated 1st June, 1981 of General Manager, Haryana Roadways, Ambala Depot, Ambala is void, inoperative, illegal and liable to be set aside. It was also alleged that before terminating the services of the petitioner he was not at all given opportunity of being heard in person who were junior to him were retained in service. He further alleged that termination order dated 1st June, 1981 be declared null and void and it is be ordered the petitioner be reinstated with full back legal entitlements *inter alia* continuity of service.

Respondent contested the claim challenged it firstly on legal grounds contending that the statement of Claim is not signed by worker as such the same is not maintainable in the court. Secondly, it was urged that Shri U. Kant is an Advocate. He is to be debarred from the signing the claim and appearing in the Court on behalf of the workman. On merit it was contended that the petitioner was appointed as helper purely on temporary basis not on regular basis. In his appointment letter it was specifically mentioned that his services could be dispensed with without showing any cause or reason. It was further contended that since the services of the petitioner were no longer required so his services were terminated and not by way of punishment.

Shri Rakesh Kumar, workman filed rejoinder refuted contentions of respondents and re-affirm his claim.

On the pleadings of the parties the following issues were framed for the just decision of the case :—

ISSUE-No. 1:

Whether applicant served Respondent more than 240 days as alleged? O.P.A.

ISSUE No. 1:

Whether order of termination dated 1st June, 1981 as alleged in para No. 4 of the plaint is void inoperative against law and unconstitutional, if so, its effect? O.P.A.

ISSUE No. III :

Whether plaint has not been properly signed if so, its effect ? O.P.R.

ISSUE No. IV :

Whether applicant's counsel is legal practitioner if so, its effect ? O.P.R.

ISSUE No. V :

RELIEF:

I have heard Shri U. Kant, Advocate for the workman and Shri Sachdeva for the respondent at length as well as have gone through the evidence adduced on the file by the parties and law referred by them. My issue-wise findings are as under :—

ISSUE NO. I:

Before recording finding on issue No. I it would be most essential to refer the statement of the applicant Shri Rakesh Kumar who appeared as AW-I and deposed on oath that he served the respondent more than 240 days. Shri Tarsem Kumar, Clerk of Haryana Roadways, Ambala Depot, Ambala appeared as RW-I Shri Ishar Dass attendance clerk appeared as RW-II. Both the witnesses deposed that the petitioner had worked more than 240 days prior to dispensing with his services. Petitioner joined on 3rd December, 1979 and he worked during the month of December, 1979 for 24 days and was paid Rs. 212.25 nP.. In January, 1980, he worked for 15 days and was paid Rs. 151.60. During the month of February, 1980, he worked for 16 days and was paid Rs. 129.65. During the month of March, 1980 he worked for 31 days and was paid Rs. 235/-. During the month of May, 1980, he worked for 23 days and was paid Rs. 181.75. During the month of June, 1980 he worked for 4 days and was paid Rs. 32.65. During the month of July, 1980 he worked for 7 days and was paid Rs. 55.30. During the month of August, 1980, he (workman) remained absent and was not paid anything. During the month of September, 1980, he worked for 19 days and was paid Rs. 155.15. During the month of October, 1980 he worked for 24 days and was paid Rs. 189.70. During the month of November, 1980, he worked for 23 days and was paid Rs. 187.85. In the month of December, 1980, he worked for 29 days and was paid Rs. 225/-. During the month of January, 1981 he worked for 29

days and was paid Rs. 225. In the month of February, 1981 he worked for 22 days and was paid Rs. 185/-. During month of March, 1981 he worked for 22 days and was paid Rs. 171/-. During the month of April, 1981 he worked for 17 days and was paid Rs. 127. During the month of May, 1981 he worked for 16 days and was paid Rs. 139.35. Thus, the petitioner worked for 261 days.

In view of the above admission of RW-I and RW-II on the basis of public records being maintained by the respondent in the discharge of their official duties, it is evident that petitioner worked more than 240 days. Accordingly, this issue is decided in the favour of the petitioner against the management/respondent.

ISSUE No. II :

In this context it would also be again beneficial to refer statements of the witnesses examined by the parties. Workman has supported his case in toto, on the other hand respondent witnesses RW-I, and RW-II were fully supported that the petitioner served the respondent for 261 days, i.e., more than the period of 240 days. As per averments of respondent it is also evident that the service, of the workman were terminated without any assigning cause or reason in other words without any fault, mis-conduct or any irregularity on the part of the petitioner. The mere allegation which has been levelled against the workman by the management in their averments that the services of the petitioner were no longer required is basically and totally wrong. It becomes true because two helpers, namely, S/Shri Roshan and Dilbagh who were junior to petitioner were retained in service. On the other hand the services of the petitioner were dispensed with. When it was incumbent upon the respondent that they should have followed the principle that the first come last go. but the respondents have violated fundamental principles reasons best known to it.

From the appointment orders copies of the same are on the file which have been Ex. RW-II to RW-I/14, it is obvious that petitioner was appointed every month without any break in his service. This fact further finds support from the statements of RW-I and RW-II. It also shows that when there is no break in the service of petitioner, so he has to be treated in continuous service of the respondent from the day of his appointment till the day of his termination. I find support from judicial pronouncement of our own

Hon'ble High Court 1976 (PLR) Page 678 in which it was observed that the respondent was employed more than one year (seasonal worker) has employed since 1963, and admittedly he is paid full wages or the season and half wages for the half season. Right from 1963 till the termination of his service he remained in continuous service for more than one year. Hence the employment within definition of worker and section 25 (F) is applicable to him as he is in continuous service of petitioner mill for more than one year, (Morinda Co-operative Sugar Mills Ltd., Morinda District Ropar versus Om Parkash Jyosthi and others).

Regarding retaining junior in service and termination of service of senior workman it was observed in 1982 (AISL Journal) 312 in a case Pyara Singh and others versus Municipal Committee, Patiala, that in the absence of any reason being set out in the return to treat the petitioners as a class a part in the matter of while they being picked upon for discharge from service retaining those juniors to them there can be no escape from the conclusion that the impugned orders smack of arbitrariness and discrimination and are thus hit by articles 14 and 16 of the constitution.

My attention was also drawn towards judicial pronouncement 1980 (Supreme Court Cases) Page 409 Santosh Gupta versus State Bank of Patiala in that case Smt. Santosh Gupta could not qualify in her departmental test so her services were terminated. She challenged the termination order in the Court of Central Industrial Tribunal-cum-Labour Court turned down her claim but the Hon'ble Judge of the Supreme Court set aside the order of the Presiding Officer, Central Government, Industrial Tribunal-cum-Labour Court, New Delhi and the applicant was directed to be re-instated with full back wages.

In view of my above discussions after giving thoughtful consideration to whole of the matter in controversy the undersigned has reached at the conclusion that the termination order of the services of the petitioner is illegal, null and void and not binding upon him because petitioner remained in services of the respondents for 261 days in other words more than 240 days, the appointment letters issued to the petitioner by the respondent are without break in service, it is also evident from that evidence that the mere charge of the respondent upon the petitioner that his services were no longer required is incorrect,

because the post of petitioner remained in existence it was never abolished. Moreover junior to petitioner, namely Roshan and Dilbagh workmen were kept in service reasons best known to respondents. Accordingly, this issue is also decided in favour of petitioner and against the respondent.

ISSUE No. III & IV :

These issues were not pressed nor any arguments were advanced. Hence decided against the respondent.

ISSUE No. V :

In view of my issuewise findings the orders of the termination of services of the petitioner is declared null and void, against the law and not binding on the petitioner. The respondent are directed that the petitioner be re-instated with full back wages and also entitled to costs of the litigation. I pass my award regarding the dispute in question accordingly.

Dated the 29th October, 1984.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 724, dated Ambala City the 13th November, 1984.

Forwarded (four copies), to the Financial Commissioner, and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

The 27th September, 1985

No. 9/4/85-6 Lab./7316.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Shri R. K. Sharma, IPS, Superintendent of Police (Railway), Ambala Cantt., Sole Arbitrator under the Industrial Disputes Act, 1947, in respect of the dispute between the Workman and the Management of M/s. Bansal Paper Mills, Bahadurgarh, District Roh-tak (Haryana).

BEFORE SHRI R. K. SHARMA, I.P.S.,
SUPERINTENDENT OF POLICE,
(RAILWAY), AMBALA CANTT.,
SOLE ARBITRATOR UNDER THE
INDUSTRIAL DISPUTES
ACT, 1947.

between

THE MANAGEMENT OF M/S. BANSAL
PAPER MILLS, BAHADURGARH,
DISTRICT ROHTAK
(HARYANA)
AND

SHRI MOHINDER SINGH-I (DISMISSED
WORKMAN)

In the matter of the Arbitration agreement entered into between the parties and published as Notification No. ID/Rohtak/20-85/13455, dated 1st April, 1985.

Present :—

1. Shri Mohinder Singh with Shri Suraj Bhan on behalf of the workman.
2. Shri K. L. Chaumal, Secretary (Administration and Liaison) on behalf of the Management.

By a separate agreement entered into between the above management and their workman and published by the Haryana Government in Haryana Gazette Extraordinary,—vide Notification No. ID/Rohtak/20-85/13455, dated 1st April, 1985, the above Management and workman referred to me, the following specific matter in dispute for arbitration under sub-section 3 of Section 10 (A) of the Industrial Disputes Act, 1947 (hereinafter referred as the Act):

“Whether the termination of services of Shri Mohinder Singh was justified and in order? If not, to what relief is he entitled?”

On the receipt of the reference, notices were issued to the parties. The first meeting was held on 29th May, 1985, and parties were asked to file their respective statements and documents. On 10th June, 1985, I also heard both the parties. After having gone through the relevant documents of the parties and hearing the arguments, I give the necessary award as below:

AWARD

M/s. Bansal Paper Mills is a factory employing around 150 workers and is situated at

Bahadurgarh. At the material time, i.e., when the reference was made to me I was Superintendent of Police at Rohtak. The term of reference relates to one Shri Mohinder Singh-I who was Cutter Helper in the factory and whose services were terminated on the basis of misconduct.

The workman was chargesheeted on 11th July, of 1984 and in the statement of charges and allegations, it was alleged that on the same date during the course of duty in shift 'A'. Shift Supervisor Shri S. Sai was allocating work to one Shri Ram Mehar (badli worker) from one machine to another, Shri Mohinder Singh (Dismissed worker) unnecessarily interfered, indulged into unwarranted arguments, abused and threatened the Shift Supervisor saying that he would see him outside the factory. The workman as is evident from the records did reply to the chargesheet and did not accept the charges. However, from his reply dated 12th July, 1984 it appears that he obstructed in official work of his Shift Supervisor. As the charges were not fully admitted so the management appointed an Enquiry Officer to find out the truth. From the papers produced before me, I find that Enquiry was held properly and Shri Mohinder Singh-I availed the opportunity of self defence by participating in the enquiry.

During the course of the domestic enquiry another show cause notice was issued to Shri Mohinder Singh-I on 18th August, 1984. It was alleged that he threatened Shri S. Sai on 11th July, 1984 outside the factory. Again Shri Mohinder Singh-I threatened the same Supervisor on 17th August, 1984 when the domestic enquiry on the basis of previous chargesheet was in progress.

I have also considered the workman's plea that he was victimised for his union activities and the same is untenable. From the records of the domestic enquiries it is apparent that the workman did not raise this plea nor produced any evidence in support thereof before either of the enquiry officer's. Hence workers this plea seems to be an after thought.

From the proceedings of the enquiry and Enquiry Reports I am inclined to believe that the charges of misconduct against Shri Mohinder Singh-I were sufficiently established and proved in the domestic enquiries and both the Enquiry Officers in their respective reports concluded that the charges were proved 'Correct'.

I do not find any inconsistency or infirmity in the enquiry so conducted. Accordingly the termination of Shri Mohinder Singh-I Cutter Helper appears to be justified and in order. However, in view of the total circumstances of the case I award compensation to the aggrieved workman which should be equivalent to fifteen days wages for every completed year of service, one month's notice pay and the admissible bonus as per the provision of Payment of Bonus Act, 1965.

Award accordingly.

Dated

R. K. SHARMA,
Superintendent of Police,
(Railways) Sole Arbitrator.

Regd.

Endorsement No. dated the

Forwarded (four copies) to the Secretary Haryana Government, Labour and Employment Department, Chandigarh as required under Section 17 of the Industrial Disputes Act, 1947.

R. K. SHARMA,
Superintendent of Police,
(Railways) Ambala Cantt.

The 1st October, 1985

No. 9/5/84-6Lab./8177.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of K. G. Khosla Compressure Ltd., 18/8 Kms., Mathura Road, Faridabad.

IN THE COURT OF SHRI R. N. SINGAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 23 of 1984.

between

SHRI PREM CHAND AGGARWAL, WORKMAN
AND THE RESPONDENT-MANAGEMENT OF
M/S. K. G. KHOSLA COMPRESSURE LTD.,
18/8 KMS, MATHURA ROAD, FARIDABAD

Present:—

Shri S. L. Gupta, for the workman.

Shri J. S. Saroha, for the respondent management.

AWARD

This industrial dispute between the workman Shri Prem Chand Aggarwal, and the respondent management of M/s K. G. Khosla Compressure Ltd., 18/8, Kms., Mathura Road, Faridabad, has been referred to this Court by the Hon'able Governor of Haryana,—vide his order No. ID/FD/1-84/8781-86, dated 1st March, 1984 under Section 10(1)(c) of the Industrial Disputes Act, 1947 for adjudication. The terms of the reference are :—

Whether the termination of services of Shri Prem Chand Aggarwal was justified and in order? If not, to what relief is he entitled?

According to demand notice, the claimant was appointed as Assistant Civil Engineer on 28th August, 1980. He was put on probation for six months. He did the work of preparation of estimates, preparation checking and verifying of bills, look after the construction and maintenance of building; to locate defects in the building and getting the same repaired; maintenance of sanitary and water supply works; watching the use of material by the contractor and inspection of the work conducted by the contractors. He was also handling dumpy level and he was physically getting the land levelled by checking the levelling. He was confirmed on 25th April, 1981. He was promoted as Civil Engineer and was granted special increment,—vide letter dated 10th February, 1983. He was deputed similar duty in Gyan Mandir Public School, Naraina. This brought him untold misery. His services were illegally terminated on 5th August, 1983. He has prayed for reinstatement with continuity of service and with full back wages.

The management has contested the claim of the claimant. It is contended that he was not workman, rather his primary duties were managerial or administrative and supervisory nature. He was drawing a salary of Rs. 2,000 per month. He was assigned various responsibilities and which the workmen are not entitled. Hence the claimant was not a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947. He was working as Departmental Head and hence he was in supervisory position. A big team consisting of supervisors, skilled, semi skilled, clerical and unskilled workmen were working under him. The Management has reasons to

believe that the claimant was not performing his duties sincerely and honestly. It was reported that he was demanding bribes and commissions and mis-using his official position as Head of the Civil Engineering Department. He had vast discretions in executing contracts, passing bills. He has also started his own business while working in the company. Hence the management has no confidence in him and terminated his services. It is, further alleged that the claimant was primarily to supervise the work of employees, working under him. He was also responsible for over all administration of the Civil Engineering Department.

Replication has been filed. The workman has reiterated that he was a workman. He being a technical person discharged his duties working physically. He had no concern with the manufacturing process. He had no concern with managerial or administrative staff. He discharged the duties of a clerk.

The reference was contested on the following issues:—

1. Whether the claimant is not workman undtr the Industrial Disputes Act (OPM) ?
2. As per reference ?
3. Whether the claimant has been gainfully employed ?

I have heard the representatives of both the parties and have gone through the evidence documentary as well as oral placed by the parties on the file in details with the help of the representatives of both the parties. My findings on the above issues seriatim are as follows:—

ISSUE NO. 1 :

The representative of the workman has contended that (1) we have to see the main duties and not incidental duties to find that the person is a workman; (2) designation of the workman does not matter, actual duty has to be seen; (3) there is no criteria of wages drawn. In support of his contention he has relied upon the judgment in Ved Prakash Gupta versus Delton Cables; 1984 PLR-Vol. 48; Page 417 and Anand Bazar Patrika Pvt. Ltd. versus its workman, 1969; II-LLJ Page 670. Even the representative of the respondent has not disputed about the above said

three criteria to decide if a person is workman or not. In the present case the claimant was drawing more than Rs. 500/- per month. He has admitted that he was drawing more than Rs. 1,600/- per month this pay alone is not deciding factor that he was a workman or not. His designation that he was a Civil Engineer is also not deciding factor. Now we have to decide what his main duties.

The management has examined MW-1 Shri R. C. Batra, Factory Manager of the respondent. He has stated that Shri P. C. Aggarwal was appointed,—vide letter Ex. M-3 as Assistant Engineer. His application for appointment is Ex. M-3. He was the Head of Civil Engineering Department. Under him were Building Section; Carpentry Section and there were two supervisors under him besides 10/12 skilled workmen and 30/35 unskilled workmen beside other workmen employed by the contractor. He supervised the work of the contractor. He was allotting day to day work to these persons. He was placing work orders on the contractors. Ex. M-4 to M-8 are relied upon. He was putting demand of skilled and un-skilled workers,—vide Ex. M-9 to M-12. He was sanctioning leaves to the persons working under him which are Ex. M-13 to M-24. He issued gate passes to the Labour working under him which are Ex. M-25 to M-34. He was submitting daily absentee report to the department,—vide Ex. M-35 to M-36. As head of the department he was authorised to recommend promotion of workers working under him which are Ex. M-37 to M-38. He also acted as member of Selection Committee for promotion test,—vide Ex. M-39. He was authorised to sign material issues passes such store requisitions are Ex. M-31 to M-48. He was authorised to verify the bills submitted by the contractors and recommend for payment, which are Ex. M-49 to M-51. He was inviting tenders which is Ex. M-52. Hence his position among the officers of the company. He was also given Rs. 1,500/- per month, plus leave travel allowance. Exhibit M-54 and M-55 are its receipts. He was also allotted separate office room, telephone and helper. He was also given Assistant for clerical work from time to time. A settlement was done with the workman which is Exhibit M-56 and it was not signed by the claimant as he was not a workman. He was not covered under the standing orders. He was marking his presence in a separate register of officers. Abstract of the registers are Exhibit M-58 to M-59. He has also been supported by

MW-2 Shri Manak Chand, who was working with the claimant. He has stated that the work of the contractor was supervised by the claimant. He himself did measuring work, dumpy level. He used to report to the claimant. The claimant was working as departmental head. The building work, carpentry work and contractor work was also under the claimant. MW-3 Shri J. S. Gosain and MW-4 Shri Faquir Ahmad also supported the above said witnesses.

As against this evidence the claimant has appeared as WW-1 and also examined Shri Shiv Kumar Bansal, WW-2, who have proved that the claimant was sleeping partner with him. The statement of the workman is very material because he has admitted many facts which clinch the issue. He has admitted that he was promoted as Civil Engineer and there was no other qualified person in the Civil Engineering Department. He has admitted that one mistry worked under him. He further admitted that there were six persons under the carpentry department. He forwarded the applications and letters of the carpentry department to the manager. He checked the rates given by the contractor. His duty was to see the work of the contractors if it was done in accordance with the drawing and proper material was used. He used to verify the bills of the contractors. He used to send his requirements to the manager to employ casual workers. He forwarded the applications of the carpenter to the manager for promotion, loan and increments. He supervised the shuttering and steel work, checking of motor, concrete, workmanship of work done, painting work, roofing sheet in raining season, replacement of glass panes, taking measurement, doing survey of plant; preparation of drawing and estimates. He has further admitted and was also allotted duty to sign on the leave applications as signing authority. He was also additional member of the appointment board. He could prevent the contractor from doing the work if the work was not found according to the standard. He has also admitted his signatures on the documents proved by the MW-1-Shri R. C. Batra and all the facts have been corroborated by the workman. Hence admitted facts are that the workman was drawing about Rs. 2,000 per month. He was appointed as Civil Engineer and number of persons worked under him. He supervised the construction work, checking and verifying of bills of the contractors. He sanctioned the leave application of

the workmen. He was an additional member of the appointing board. He sent requisition for appointment of casual workman. He recommended increments, promotion and loan to the workmen working under him. Before this appointment with the respondent he had worked as Supervisor with C.W.P.C. from 1st January, 1965 to 3rd June, 1970 as has been detailed in the application for appointment Exhibit M-3. He has worked as Sectional Officer in Haryana Agricultural University from 6th June, 1970 to 8th November, 1975. He worked as Civil Engineer 1st December, 1975 to 28th April, 1977 with M/s Gossing Trading Co. He has worked as a Engineer with M/s NITRA from 5th July, 1979 to upto date joining with the respondent. He had worked as Sectional Officer from 29th April, 1977 to 1st April, 1979 with M/s Maharishi Dyanand University, Rohtak. Hence his previous record shows that he was working as officer and was never a workman. The representative of the workman has relied upon judgment of the Hon'ble Supreme Court in Ved Parkash Gupta Vs. Delton Cable India Pvt. Ltd., FLR-1984; Vol. 48 page 417. In this case the nature of duties of the workman shows that substantial part of the work of the claimant consisted of looking after the security of the factory and its property by putting the watchmen working under him to work at the factory gate or sending them to watch towers or around the factory to accompany visitors to the factory and making entries in the visitors' register as regards the visitors and in the concerned registers as regards materials entering or going out of the premises of the factory. It also be remembered that the evidence shows that the claimant could never appoint or dismiss any workman or any enquiry against the workman. In these circumstances we hold that the substantial duty of the claimant was only that of a Security Inspector at the gate of the factory premises and it was neither managerial nor supervisory in the sense in which those terms are understood in industrial law."

The facts of this case are entirely different. The claimant was a member of the Selection Committee. He sanctioned leaves. He checked and verified the bills of the contractors. He recommended promotions, increments of the workmen, working under him. Hence he was working in a supervisory capacity. Reliance has been placed on the judgment of Delhi High Court in Mathur Aviation versus Lt. Governor Delhi and other; 1978-FLR-Vol. 36 page 7 in which Pilot has been held to be workman.

Managerial or administrative function require a position to control the work of others. It does not mean that a person who does some work and gets assistants for doing that work can be described as a person working in a managerial or administrative capacity. Applying the same principles the claimant was not a workman as he was controlling the work of others. Hence he was working on the managerial or administrative job.

The representative of the management has also relied upon certain judgements of Supreme Court. He has relied upon the judgment of *Burmah Shell Company versus Burmah Shell Management Staff Association* 1970-II-LLJ-590 (S.C.). It has been held that the person technically qualified could be employed mainly in supervisory capacity in view of the technical knowledge and qualification possessed by him. Such a person would not be workman if he draws salary more than Rs. 500 p.m. Applying this test the transport engineer was held to be a supervisor. It has been held in *Kerala State Electricity Workers Federation versus Kerala State Electricity Board*, 1983-II-LLJ page 30 that Assistant Engineer of the Board got a salary over Rs. 500 cannot be said to be worker from the powers and duties they perform.

In view of the above discussions I find that the claimant was not a workman rather he was working in managerial, administrative and supervisory capacity drawing more than Rs. 500 per month. Hence he was not a workman under the Industrial Disputes Act.

ISSUE NO. 2 :

In view of the findings on issue No. 1 that the claimant was not a workman under the Industrial Disputes Act. Hence Section 25-F is not attracted and the termination of the claimant cannot be challenged under the Industrial Disputes Act, 1947. Moreover he is gainfully employed as he has admitted that he is sleeping partner in a contractor's firm. This fact has also been admitted by Shri Shiv Kumar Bansal, WW-2. Hence the claimant is not entitled to any relief.

The award is given accordingly.

Dated : The 28th August, 1985.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 2598, dated the 17th September, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act.

R. N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

No. 9/5/84-6-Lab./ 8182.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Goodyear India Ltd., Ballabgarh.

IN THE COURT OF SHRI R. N. SINGAL,
PRESIDING OFFICER, LABOUR COURT,
FARIDABAD.

Reference No. 105 of 1985

between

SHRI CHATTAR SINGH, WORKMAN AND
THE RESPONDENT-MANAGEMENT OF M/S
GOODYEAR INDIA Ltd. BALLABGARH.

Present:—

Shri R. C. Sharma for the workman.

Shri A. S. Chadhla for the respondent

AWARD

This industrial dispute between the workman Shri Chattar Singh, and the respondent-management of M/s Goodyear India Ltd., Ballabgarh, has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/4-85/7366-72, dated 27th February, 1985 under section 10 (i) (c) of the Industrial Disputes Act, 1947 for adjudication. The terms of the reference are:—

Whether the termination of services of Shri Chattar Singh was justified and in order? If not to what relief is he entitled?

According to the claim statement, the claimant joined service of the company in the year 1961. He was promoted as Crew Leader in the year 1967. In the year 1970 the post of crew leader was abolished and was changed into Supervisor. In the year 1973, the claimant was declared as Salary Supervisor having the fixed salary of Rs. 560/- p.m. In the year 1976, the claimant was transferred to the tyre building section as Supervisor. The services of the claimant were terminated on 4th May, 1983 as non-managerial persons had formed the union in the year 1978. The claimant was an active member of the union. No retrenchment compensation was paid to him. Hence he has prayed for reinstatement with continuity of service and with full back wages. He has alleged that he was initially a workman doing the job of checking the machines, checking the material supplied for production. As a supervisor, the claimant was only a guide having no power to take disciplinary action and sanction any leave or advance, increments loan and even could not oblige any workman in any manner. It has also been admitted that the claimant filed a civil suit, which was rejected on the grounds that suit is not maintainable as per section 14 of the Specific Relief Act. The management pleaded that in case he is a workman he may approach the authority under the Industrial Disputes Act, 1947.

The claim of the workman has been contested by the management. It is contended that the claimant was working as Production Supervisor with effect from 1st March, 1973. He was drawing salary at the rate of Rs. 2,855 per month. The claimant's duty was supervisory in nature, therefore he is not a workman within the ambit of section 2(s) of the Industrial Disputes Act, 1947. Hence he is not entitled to any relief. It is therefore contended that the jurisdiction of the Court has been wrongly invoked. It is contended that the claimant filed civil suit No. 167 of 1983 for declaration with consequential relief of damages challenging the legality, propriety and bona fides of the order of termination of his services and in that suit, the claimant had made an admission of the fact that he was supervisor drawing salary of Rs. 2,855 p.m. The Court has decided that the claimant was a supervisor and his case falls within the realm of master and servant and as such on 7th December, 1983 a judgement was given that the suit of the plaintiff was not competent. Against this judgement

the claimant went in appeal in the court of Shri R. K. Gupta, Distt and Sessions Judge, and the appellate court affirmed the judgement of the Lower Court and dismissed the appeal. It was held that the claimant was not a workman. It is further alleged that this findings is binding on the management and the claimant and principle of res-judicata is applicable in this court.

In his rejoinder the claimant has admitted that he was drawing a salary of Rs. 2,855 p.m. and was designated as Supervisor but no issue was framed by the trial court if the claimant was a workman or a supervisor. It is further alleged that the judgement of Civil Court has no consequence. It is further alleged that actual duties of the claimant has to be seen, which has been detailed in para No. 1 to 10 in the claim statement. In view of the above pleadings, the following preliminary issue was framed:—

1. Whether the judgement dated 7th December, 1983 and of the appellate court 4th August, 1984 operate res-judicata on the parties?

I have heard the representatives of both the parties and have gone through the documents placed on the record. I have carefully gone through the copy of plaint of the claimant in the previous civil suit. In para No. 2 of the plaint, the claimant has alleged that he is permanent and confirmed employee of the respondent and the provisions of the Certified Standing Orders and the provisions of Industrial Employment Standing Orders Act are applicable on the service conditions of the plaintiff and the service conditions are also governed by the terms and conditions of the appointment letter and there is no other specific agreement or contract entered into between the plaintiff and the defendant. In part No. 3 of the plaint it has been averred that in lieu of good services and satisfactory work and conduct of the plaintiff, the respondent promoted the claimant to the status of Supervisor with effect from 1st March, 1973. It is further alleged in para No. 7 of the plaint that the plaintiff was holding a permanent job and in para No. 8, it contended that without any reason his services were terminated on 3rd May, 1983. A legal notice dated 17th May, 1983 was served on the management demanding re-instatement. The claimant prayed in the plaint that he is entitled to reinstatement with full back wages and continuity of service and in the alternative in case the plaintiff is treated as contractual employee of the defendant company, he

be awarded damages equivalent to amount which the plaintiff would have earned by remaining in the service till the age of his retirement.

I have also gone through the written statement filed by the defendant in that Civil suit. Objection is taken that suit for Specific Performance of the contract of personal service is barred under the Specific Reliefs Act. Hence the suit is not maintainable. He has not quantified the damages he wants in the alternative. It is denied that the provisions of the Certified standing orders governed the service conditions of the plaintiff as he was a production supervisor. The plaintiff used to supervise the work of the employees in his department. He could retain the workman on over time. He attested the pay slips. He also recommended disciplinary action against the workman. In short his duties were clearly that of a supervisory. In the replication the workman has contended that his duties after the promotion were the same. In view of these pleadings the following preliminary issue was framed by the Civil Court:—

“Whether the suit is maintainable in the present form ?

1. It has been held in para No. 7 of the judgment dated 7th December, 1983 that the provisions of Industrial Employment Standing Order Act, 1946 are not applicable because the plaintiff is admittedly not a workman. He has himself admitted in the plaint that he was given status of a Production Supervisor with effect from 1st March, 1973 and he was drawing a salary of Rs. 2,855 p.m. It is further stated that Certified standing orders of the company were not applicable at the time of termination of his services. It is finally held that the plaintiff has not quantified his damages and no court fees has been paid. Hence the prayer remains only for declaration. It is held that suit is not maintainable in the present form and the same is dismissed. Against this judgment the claimant went in appeal. It is held, in the present case the plaintiff was admittedly drawing a salary of Rs. 2,855 p.m. He was not a workman within the meaning of Industrial Disputes Act and it is futile to contend that the respondent contravened or violated any statutory provisions entitling the appellant to claim remedy of the nature sought in the present proceedings. Hence the appeal was dismissed with costs.

I have carefully gone through the entire plaint of the plaintiff filed in the Civil suit. He has nowhere alleged that his substantial duties were of a workman and not of a supervisor. He has not mentioned a single word that after promotion as supervisor he was still a workman. He has therefore admitted the stand of the respondent that he was a production supervisor and his services had been legally terminated. The Civil Court has also held in view of the admission that he was not a workman. Hence he was not entitled for the enforcement of contract of personal service. Hence the judgment of the Civil Court operates as res-judicata and the plaint of the plaintiff operates as estoppel. The representative of the claimant contended that in the judgment of the Civil Court no issue was framed if the plaintiff was a workman and no evidence was recorded and hence, the judgment does not operate res-judicata. Reliance is also placed upon the judgment of Hon'ble Supreme Court in Baldev Das Shiv Lal and another vs. Filmistan Distributors (India) Pvt. Ltd. AIR-1970 page 406. It is held that “a consent decree does not operate as res-judicata, because a consent decree is merely the record of a contract between the parties to a suit, to which is superadded the seal of the Court. He has further relied upon the judgment of Hon'ble Supreme Court in Ram Gobinda Daw vs. H. Bhakta Bala Dassi; AIR-1971-Supreme Court; page 664. It is held that “Suit dismissed by trial Court for default or for want of jurisdiction does not operate as res-judicata does not operate as res-judicata in subsequent suit.” Both the judgments are not applicable to the facts of this case. Firstly it is not a consent decree, secondly the suit was not dismissed in default. The plaintiff has taken the plea that he was production Supervisor. In view of the admission it was held that he was not a workman and no evidence was required as facts admitted are not required to be proved.

The representative of the management has contended that the claimant cannot invoke the jurisdiction of the civil court as well as the jurisdiction of the Labour Court. He could choose only one remedy. He has already chosen one remedy and after defeating in Civil Court he cannot change the stand in the Labour Court. He has relied upon the judgment of our own High Court in Sukhi Ram vs. State of Haryana;

1982-P.L.R., page 717. It has been held in para No. 10 of the judgment as follows :—

"That if the right or liability flows from the Act itself then the remedy therefore would also lie within the procedural provisions of the same statute alone. Where the right or obligation giving rise to the industrial dispute springs from a source other than the Act that is, under the general law (including therein any other statutes) then the workman is expressly given two alternative remedies. In such a case, it is in his discretion to either make resort to the ordinary jurisdiction of the Civil courts or to seek the remedies under the Act. However, he must distinctly elect his remedy. It is now authoritatively settled that he cannot have both. He is to choose one or the other. In the present case it is the common case that the dismissal or removal of workmen here raises dispute arising out of the rights or liabilities under the general or the common law. There is no dispute here that the workman have no even remotely resorted to any of the remedies under the Industrial Disputes Act. No industrial dispute was sought to be raised on their behalf nor any reference claimed under section 10 of the Act. They had straight away made their election and chosen to agitate their rights in the civil courts. Both on principle and binding precedent, therefore, they would be clearly entitled to claim relief by way of a civil suit."

In view of the above said judgments, the claimant cannot have two remedies. He has selected the remedy in the civil court. Now he cannot come to the Labour Court. Reliance is also placed on the judgment of Orissa High Court in Biswanath Dass and others versus Ramesh Chander Patnaik and others: 1980-I-LLJ-page 35. It is held that "In the light of the principles laid down by the Supreme Court, the plaintiff could elect to choose his remedy either moving the machinery under the Industrial Disputes Act or by approaching the civil court for

redressal of his grievances advanced arising out of dismissal."

In view of the above said discussion and after defeat in the Civil Court, the claimant cannot have the remedy in the Labour Court. He is also estopped from seeking remedy in this Court because he has already taken the stand in the Civil Court that he was promoted as Production Supervisor. He has not claimed that he is a workman. He cannot change his stand to allege that he was not a supervisor but he was only a workman. It is like blowing hot and cold in the same breath. In view of the above discussions, the previous judgments of the Civil Courts operate as *res-judicata* and the previous plaint also operates as estoppel. This reference is therefore bad in law. The claimant is not entitled to any relief. The award is therefore given accordingly.

Dated 3rd September, 1985.

R. N. SINGAL,

Presiding Officer,

Labour Court, Faridabad.

Endorsement No. 2604, dated 17th September, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of the Industrial Dispute Act.

R. N. SINGAL,

Presiding Officer,

Labour Court, Faridabad.

The 4th Oct., 1985.

No. 9/5/84-6Lab/8397.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Oswal Engineering and General Works, 48 N.I.T. Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL HARYANA, FARIDABAD.

Reference No. 639/83

between

SHRI NARENDER MOHAN WORKMAN AND THE MANAGEMENT OF M/S OSWAL ENGINEERING AND GENERAL WORKS, 48 N. I. T., FARIDABAD.

Present:—

Shri R. C. Sharma for the Management,
None for the workman.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section-10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Narender Mohan Workman and the Management of M/s Oswal Engineering and General Works, 48, N.I.T., Faridabad, to this Tribunal for adjudication:—

Whether the termination of service of Shri Narender Mohan was justified and order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. The claimant in his claim statement dated 19th Oct., 1984 alleged that he was employed by the respondent on 1st Oct., 1976 as Grinderman, but the Management without any reason suspended him on 21st January, 1982 and issued a false and fabricated charge-sheet on 22nd January, 1982 which was suitably replied by him. It was further alleged that the Management did not institute any domestic enquiry and did not allow him to join duty. It was also alleged that the Management had terminated his services with effect from 17th August, 1983 illegally, due to which he was entitled to reinstatement with full back wages.

3. The management in their written statement dated 12th December, 1984 pleaded that the claimant was still in their employment, but was under suspension. It was further pleaded that the claimant was in their employment on 17th August, 1983 and that the reference was premature. It was further pleaded that the claimant was charge-sheeted on 21st January, 1982 and was getting as 75 per cent suspension allowance, but he stopped attending the factory since 14th August, 1983.

4. The claimant in his rejoinder filed on 4th January, 1985 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 4th January, 1985:—

- (1) Whether the reference is premature as pleaded? OPM
- (2) Whether the termination of service of Shri Narender Mohan was justified and in order? If not, to what relief is he entitled?

6. It may be mentioned that the Management examined one witness and proved documents Exhibit M-1 to Exhibit M-12 and closed their evidence on 2nd August, 1985. The case was then fixed for evidence of the workman for 11th September, 1985 on which date none appeared on behalf of the claimant and as such *ex parte* proceedings were ordered against him. After going through evidence led by the Management and hearing the representative of the management, my findings on the above issues are as under:—

Issue No. 1.

7. MW-1 Shri Prem Nath Personnel Officer of the respondent stated that the claimant was suspended *vide* order Exhibit M-1 and that charge-sheet Exhibit M-2 was served on him. He further stated that the claimant stopped attending the factory when the letters Exhibit M-3, M-5, M-7 were written to the claimant and that Exhibit M-4 and M-8 were the postal receipts. He further stated that Exhibit M-9 and M-10 contained the details of the payment given to the claimant. He further stated that the services of the claimant were not terminated in August, 1983 and that his name was not yet struck off from the Muster Roll. He also proved the conciliation proceedings Exhibit M-11 and M-12.

8. A perusal of the above evidence would show that letter Exhibit M-3 was written to the claimant on 8th September, 1983 by the Management asking the claimant to join duty because he was absenting himself since 14th August, 1983. In the letters Exhibit M-6 and M-7 dated 30th September, 1983 and 13th Oct., 1983, the claimant was asked to join duty. In the conciliation proceedings dated 26th Oct., 1983 copy Exhibit M-12, the Management took the plea that the services of the claimant had not been terminated but he was under suspension. In the written statement dated 12th December, 1984, it was pleaded that the claimant was in the employment of the management. There is no evidence in rebuttal because the claimant did not appear on 11th September, 1985 and *ex parte* proceedings were ordered against him as mentioned above. The testimony of MW-1 Shri Prem Nath and recitals made in the documents Exhibit M-3, M-6, M-17, and M-12 as well as the plea taken in the written statement to show that the services of the claimant have not been terminated by the Management up-till now, but on the other hand, he is under suspension. Consequently the reference is premature because the

services of the claimant were not terminated on 17th August, 1983. The issue is decided accordingly in favour of the management.
Issue No. 2.

9. In view of the findings on issue No. 1 above, this issue does not arise for decision because the services of the claimant have not been terminated by the Management so far. The reference is pre-matured. The award is passed accordingly.

Dated, 24th September, 1985.

R. N. BATRA

Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

Endorsement No. 754, dated 24th September, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA

Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

No. 9/5/84-Lab./8468.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Jai Hind Investment & Industries Private Ltd., Plot No. 135, Sector 24, Faridabad.

BEFORE SHRI R. N. BATRA,
PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 412/1982

between

SHRI OM PARKASH WORKMAN AND THE
MANAGEMENT OF M/S JAI HIND INVEST-
MENT & INDUSTRIES PRIVATE LIMITED
PLOT NO. 135, Sector 24, FARIDABAD.

Present:

Shri Amar Singh Sharma, for the workman.
Shri Jagbir Singh Badhana, for the
management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following disputes between Shri Om Parkash workman and the management of M/s. Jai Hind Investment and Industries Private Limited Plot No. 135, Section-24 Faridabad, to this Tribunal for adjudication:—

Whether the termination of service of Shri Om Parkash was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. In the claim statement dated 1st December, 1982, it was alleged that the claimant was employed on 14th July, 1976 as Mason on permanent basis, but the management terminated his services illegally on 21st June, 1982 in a revengful spirit because he was one of the claimants in a petition under Section 33(c) (2) of the Industrial Disputes Act, 1947, and that no compensation was paid to him while terminating his services. It was, therefore, prayed that the claimant be reinstated with full back wages.

3. In the written statement dated 20th December, 1982, it was pleaded by the management that the claimant himself abandoned his job which over-staying his leave originally granted to him for more than 30 days and thereafter in spite of several written communications by the management, the whereabouts of the claimant could not be established due to which the Management had to remove his name from the Muster Rolls of the Company. It was also pleaded that the compensation was offered to him on 22th June, 1982 when he refused to accept the same.

4. On the pleadings of the parties, the following issues were framed:—

- (1) Whether the workman abandoned his job? If so, to what effect? OPM
- (2) Whether the termination of service of Shri Om Parkash was justified and in order? If not, to what relief is he entitled? OPM

5. It may be mentioned that the Management examined one witness and documents, Exhibit M-1 to M-12 have been tendered into

evidence. The claimant examined two witnesses and documents, Exhibit MW-1 to W-2, have been proved by him. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

Issue No. 1.

6. The Management examined Shri Prem Parkash Singal its Secretary who stated that claimant was employed as Mason on 14th June, 1976 on temporary basis,—vide letter Exhibit M-1 who proceeded on leave,—vide leave application Exhibit M-2 on 26th March, 1982 for one month, but did not join duty after the expiry of one month's period. He further stated that the letters, Exhibit M-3, M-5 and M-7 were sent to the claimant to join duty, which were received as undelivered,—vide documents Exhibit M-4, M-6 and M-8, further stated that the fourth letter Exhibit M-9 was sent to the claimant on 28th May, 1982 informing him that his name had been struck off from the muster roll, which was also received back as undelivered and that citation Exhibit M-11 was published in the News Paper dated 31st May, 1982. He further stated that the claimant came to them on 22nd June, 1982 and the amount was offered to him on that date but he refused to receive the said amount vide voucher Exhibit M-12.

7. The claimant Shri Om Parkash (WW-1) stated that he was employed on 14th October, 1973 and was drawing Rs. 340 per month when his services were terminated on 21st June, 1982. He further stated that the Union had filed a complaint in the Labour Court in which he took active part and that he was asked by the Management to withdraw that application but he did not do so due to which he was turned out and that no notice pay or compensation was given to him when his services were terminated. He further stated that he used to reside in the hut constructed by the respondent Company and produced the money order coupon Exhibit W-1 and the letter Exhibit W-2. He further stated that no letter was received by him by the Management and that he was the employed since then.

8. A perusal of the above evidence would show that the claimant was employed,—vide letter Exhibit M-1 and that he proceeded on leave for one month,—vide application Exhibit

M-2 for the period 26th March, 1982 to 24th April, 1982 and thereafter did not report for duty. The evidence further shows that the letters Exhibit M-3, M-5 and M-7 were written to him on 1st May, 1982, 6th May, 1982, 20th May, 1982 respectively to join duty, which were received back as undelivered,—vide documents Exhibit M-9 M-6 and M-8 and thereafter the letter Exhibit M-9 dated 28th May, 1982 was sent to the claimant informing him that his name had been struck off from the muster roll of the Company. This letter was also received back as undelivered,—vide document Exhibit M-10 and citation Exhibit M-11 had also no effect. The testimony of MW-1 Shri Prem Parkash finds corroboration from the documentary evidence Exhibit M-1 to M-11 as mentioned above, which shows that the claimant did not report for duty after availing of the leave and that his name was ultimately struck off on 28th May, 1982,—vide letter Exhibit M-9. The plea taken by WW-1 Shri Om Parkash in cross examination that he had given the leave application Exhibit M-2, but leave was not sanctioned by the Management is without any force because the leave application Exhibit M-2 was duly sanctioned by the Management. Moreover WW-2 Shri Ram Kishan admitted in cross examination that the claimant proceeded on leave, but he did not know the dates. The testimony of this witness shows that the claimant availed of the leave. The plea taken by the claimant that his services were terminated because he was an applicant in a application before the Labour Court and thus victimised is without any force because the claimant himself did not join duty after expiry of the leave period. The money order coupon Exhibit W-1 is dated 24th January, 1981, while the letter Exhibit W-2 is dated 18th July, 1980. During these dates, the claimant was in service and the dispute started when he did not report for duty after 24th April, 1982. Consequently, the documents Exhibit W-1 and W-2 do not help the claimant because the name relate to the period when there was no dispute between the parties during the years 1980 and 1981. In the rulings reported as *Freewheels India Ltd. V. State of Haryana and others* 1984-I.L.L.N. page 779, *Freewheels India Ltd. versus State of Haryana* 1984-II-IJJ page 77, *National Engineering Industries Ltd. Jaipur versus Hanuman, 33-FJR-19, Buckingham and Carnatic Co., Ltd. V. Venkatiah and another* AIR-1964

Supreme Court 1272, it is laid down that Certified Standing Orders have statutory force and that of the workman did not join his duty after his leave expired, it could only mean that his service stood automatically terminated. Under all the circumstances, it is held that the claimant abandoned his job due to which his name was struck off by the Management on 28th May, 1982. The issue is decided accordingly in favour of the Management.

Issue No. 2:

9. As already mentioned above that the Management terminated the services of the claimant on 28th May, 1982,—*vide* letter Exhibit M-9. No notice pay or compensation as provided under Section 25-F of the Industrial Disputes Act, 1947 was sent along with that letter or by money order MW-1 Shri Prem Parkash stated that the amount was offered to the claimant on 22nd June, 1982 when he came to the factory but he refused to receive the same. In the ruling reported as *M/s Kanti Weekly Petitioner V. D. D. Gupta*, 1984-Lab. I.C. N.O.C. 168 (Delhi). It is laid down that tender or offer of compensation must be at the time of retrenchment and that compensation paid a day after retrenchment is illegal and further that the reinstatement of the employee in such circumstance was the proper course. Following this ruling it is held that offer of compensation on 22nd June, 1982 was not valid because the amount of compensation or notice pay should have been sent to the claimant on 28th May, 1982, on which date his services were terminated. Due to non compliance of Section 25-F of the Industrial Disputes Act, 1947, the claimant is entitled to reinstatement with full back wages. The award is passed accordingly.

Dated the 26th September, 1985.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

Endst No. 759, dated the 26th September, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section-15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

No. 9/5/84-Lab/8517.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Premier Straw Board Paper Mills Pvt. Ltd., Plot No. 87-88, Sector 25, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING
OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 465/1983.
and 464/1983

Between

SHRI RAGHUBIR SINGH AND RAM BIR
SINGH WORKMEN AND THE MANAGEMENT
OF M/S PREMIER STRAW BOARD PAPER
MILLS PVT LTD., PLOT NO. 87-88, SECTOR 25,
FARIDABAD

Present:—

Shri Manohar Lal for the workman.
Shri R. C. Sharma for the management.

AWARD

This award would dispose of two consolidated reference bearing No. 465 of 1983 (Shri Raghubir Singh V/s Premier Straw Board Paper Mill Pvt. Ltd., and No. 564/1983 (Shri Rambir Singh V/s Premier Straw Board Paper Mills Pvt. Ltd.) and the main proceedings were held in reference No. 465/1983.

2. In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Saryshri Raghubir Singh and Rambir Singh Workmen and the management of M/s Premier Straw Board Paper Mills Pvt. Ltd., Plot No. 87-88, Sector-25, Faridabad, to this Tribunal for adjudication:—

Whether the termination of services of Shri Raghubir Singh and Rambir Singh were justified and in order? If not, to what relief are they entitled?

3. Notices were issued to both the parties. Shri R. C. Sharma, representative of the Management, stated that the dispute between the parties

had been settled,—vide settlement Exhibit MX, which bore the signatures of both the parties, according to which the claimant had given up their rights of reinstatement etc and that Shri Rambir Singh claimant would be paid Rs. 3500/- while Mr. Raghubir Singh Rs. 2500 in full and final settlement of their account on 4th Oct., 1985 at Faridabad and that no dispute was now left between the parties. Shri Raghubir Singh and Shri Rambir Singh workmen and Shri Manohar Lal representative of the workmen stated that they have heard the above statement made by the representative of the Management which was correct, and that the dispute between the parties had been settled,—vide settlement Exhibit MX, according to which Shri Rambir Singh would get Rs. 3500, while Shri Raghubir Singh Rs. 2500/- from the Management on 4th January, 1985 at Faridabad in full and final settlement of their claims and that they had given up their rights of reinstatement etc. and that no dispute is now left between the parties. In view of the above testimony of Shri R. C. Sharma representative of the Management and Shri Raghubir Singh, Shri Rambir Singh workmen and Shri Manohar Lal representative of the workmen, and the recitals made in the document Exhibit MX, the dispute between the parties stands settled, as mentioned above. The award is passed accordingly.

Dated the 30th September, 1985

R. N. BATRA

Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

Endorsement No. 763, dated 30th September, 1985.

Forwarded (four copies), to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA

Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

No. 9/5/84-6Lab/8518.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Bristol Paints, Plot No. 308, Sector 24, Faridabad:—

BEFORE SHRI R. N. BATRA,
PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 93/83

between

SHRI P. S. GUJARAL, WORKMAN AND THE
MANAGEMENT OF M/S BRISTAL PAINTS,
PLOT NO. 308, SECTOR 24,
FARIDABAD

Present:

Shri R. C. Sharma for the workman.

None for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri P. S. Gujaral, workman and the management of M/s Bristol Paints, Plot No. 308, Sector 24, Faridabad, N.I.T., to this Tribunal for adjudication:—

Whether the termination of service of Shri P. S. Gujaral was justified and in order? If not, to what relief he is entitled?

2. Notices were issued to both the parties. In the claim statement, dated 18th March, 1983, it was alleged by the claimant that he was appointed as Accountant on 4th April, 1977 by the respondent and worked up to 12th October, 1982. It was further alleged that the job assigned to the claimant was to maintain cash and accounts books and that the duties of the claimant were of a clerical nature. It was alleged that on 11th October, 1982, the letter was issued by the management to the effect that the services of the claimant were not more required and that no notice pay or compensation

was paid to him. It was further alleged that termination of services of the claimant was against the principles of natural justice and as such, the claimant was entitled to reinstatement with full back wages.

3. The management in their written statement, dated 8th April, 1983, pleaded that the claimant was employed as Head of the Accounts Department on monthly salary of Rs. 1475 and that M/s Bristol Paints, Faridabad, a sole Proprietorship concern was dissolved on 18th July, 1982 on the death of the sole proprietor and that the claimant was not a workman, but was discharging the managerial, administrative and supervisory duties. It was further pleaded that the legal heirs had succeeded to the Estate of the deceased and that after the death of Shri R. P. Mehta, Sole Proprietor, the claimant tried to blackmail the legal heirs of Shri R. P. Mehta and that some accounts books were taken out of his possession with great difficulty till 11th October, 1982. It was further pleaded that the conduct of the claimant led to complete loss of confidence in him.

4. The claimant in his replication, dated 7th May, 1984 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 1st June, 1984:—

- (1) Whether the claimant was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 ? OPM
- (2) Whether the services of the claimant came to an end by dissolution on the death of the Sole Proprietor as pleaded ? OPM
- (3) Whether the termination of service of Shri P. S. Gujral was justified and in order ? If not, to what relief is he entitled ? OPM

6. It may be mentioned that the management examined one witness and proved documents Exhibits M-1 to M-4, on 29th March, 1985 and thereafter a number of opportunities were given to them, but ultimately none appeared on behalf of the management on 11th September,

1985, due to which *ex parte* proceedings were ordered against the management. The claimant has appeared in the witness-box and documents, Exhibit W-1 to W-18 have been proved by him. After going through the entire evidence and hearing the representative of the claimant, my findings on the above issues are as under :—

ISSUE NO. 1:

7. MW-1 Shri Durga Dutt, Administrative Officer of the respondent stated that the claimant was Incharge of the Accounts Section and that two persons worked under him. He further stated that the claimant used to check the record of the time office and recommended leave, advance, etc., which were sanctioned by Mr. Mehta, Proprietor of the factory. He further stated that the claimant used to represent the management in Sale Tax and Income Tax Departments and also used to correspond on behalf of the management,—*vide* letters, Exhibits M-1 to M-3. These documents show that the same were signed by the claimant as Accountant on behalf of the respondent. On the other hand, Shri P. S. Gujral (WW-1) stated that he was employed as Accountant on 4th April, 1977 and used to maintain the account books. He further stated that no person worked under him, but there was Cashier in the Accounts Branch who worked separately. He further stated that his initial wages were Rs. 750 per month, but on 11th October, 1982, he was getting Rs. 1475 per month, including house rent and electricity charges. He further stated that he had no authority to sanction leave/advance to any worker nor he could appoint or promote any workman, but, on the other hand these powers were exercised by Shri M. L. Duggal, Manager and R. P. Mehta, Proprietor. He further stated that he was employed as a workman. He also stated that the wage slips were issued to the workers and that the same were issued to him, copies, Exhibit W-3 to W-17. He further stated that leave book was issued to the workers and that the leave book issued to him was Exhibit M-18. The claimant has thus deposed that he was employed as Accountant and was maintaining the accounts and that no job of supervisory nature was being performed by him, but, on the other hand, the Manager and Proprietor of the factory used to

perform the supervisory/managerial jobs. The wage slips, Exhibits W-3 to W-17 and leave book, Exhibit W-18 have been produced by him to show that he was being treated like the other workers. The testimony of MW-1 Shri Durga Dutt to the effect that the claimant was the head of the accounts section and that he used to perform the managerial duties is not supported by any documentary evidence. Merely because the letters, Exhibits M-1 to M-3 were signed by claimant as Accountant do not go to show that the claimant was performing any supervisory job. In the ruling reported as *Arkal Govind Raj Rao v. Giba Geigy of India Ltd., Bombay, 1985, Lab. I.C. 1008*, it is laid down that when a question is raised whether the claimant is a workman or not, the Court must find out what are the primary and basic duties of the person concerned in the present case, the primary and basic duties being performed by the claimant were of clerical nature. Consequently the claimant was a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. The issue is decided accordingly against the management and in favour of the workman.

ISSUE NO. 2:

8. MW-1 Shri Durga Dutt, stated that Shri R. P. Mehta, died in July, 1982 and that on his death, the concern stood dissolved. WW-1 Shri P. S. Gujral, claimant stated that Shri R. P. Mehta died on 18th July, 1982 and that after his death, his two sons, his widow and his mother were running the same business even now. In cross-examination MW-1 Shri Durga Dutt admitted that the name of the concern had not been changed so far and that he was working in that concern since 1978 and further that the same products were being manufactured. He also stated that all the assets and liabilities of the old firm had been taken by the new firm. Shri R. P. Mehta, Sole Proprietor died on 18th July, 1982 and there is no evidence that the services of any employee of the factory were terminated on that date or even during the month of July, 1982. On the other hand, the services of the claimant were terminated on 11th October, 1982,—*vide* letter, Ex. W-2, in which it was mentioned that his services were no more required.

The evidence thus shows that all the workers continued in service even after the death of Shri R. P. Mehta and his business is being run by his heirs. The Management has also not placed on file the copy of dissolution deed. There is thus no evidence to hold that the services to the claimant came to an end on the death of Shri R. P. Mehta Sole Proprietor because the claimant continued in service even after the death of Shri R. P. Mehta, as already mentioned above. The issue is decided accordingly against the management.

ISSUE NO. 3:

9. The claimant joined service on 4th April, 1977 and his services were terminated,—*vide* letter dated 11th Oct., 1982 Exhibit W-4. No notice pay or compensation was given to him and as such the provisions of Section 25-F of the Industrial Disputes Act, 1947, have not been complied with. Consequently, the termination of service of the claimant was neither justified nor proper and as such, the claimant is entitled to reinstatement with full back wages. The award is passed accordingly.

The 30th September, 1985.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

Endorsement No. 764, dated 30th September, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

KULWANT SINGH,

Secretary to Government Haryana,
Labour & Employment Department.